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THE ROLE OF THE GOVERNING BOARD.

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ASSOCIATION OF GOVERNING BOARDS OF UNIV. AND COLL.

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COLLEGES AND UNIVERSITIES ARE CORPORATIONS GOVERNED BY BOARDS OF TRUSTEES. SOME ARE PUBLIC, AND OTHERS ARE PRIVATE, NONPROFIT CORPORATIONS. BOARDS ARE USUALLY COMPOSED OF LAY PERSONNEL, ASSUMED TO BE REPRESENTATIVE OF THE PUBLIC WHO ARE INTERESTED IN THE WELFARE OF THE INSTITUTION. LEGALLY, THE BOARD HAS COMPLETE AUTHORITY AND RESPONSIBILITY FOR THE INSTITUTION, ALTHOUGH IN PRACTICE MUCH OF ITS AUTHORITY IS DELEGATED TO THE OFFICERS AND FACULTY. THE FACULTY LARGELY DETERMINES THE PROGRAM AND EDUCATIONAL STANDARDS, WHILE THE TRUSTEES ARE RESPONSIBLE FOR ADEQUACY OF THE PLANT, DETERMINATION OF OVERALL POLICIES, SELECTION OF A PRESIDENT, AND ADEQUATE FINANCING. AS THE BOARD'S EXECUTIVE OFFICER, THE PRESIDENT SERVES IN A LIAISON CAPACITY WITH THE FACULTY AND BOARD. THE LAY BOARD AS FOUND IN THE UNITED STATES IS UNIQUE IN HIGHER EDUCATION. ITS ADVANTAGES ARE IN INVOVEMENT OF REPRESENTATIVES OF THE PUBLIC IN POLICY FORMATION, OVERSEEING MANAGEMENT OF THE INSTITUTION, AND ASSISTING IN ADEQUATE FINANCIAL SUPPORT. THE SYSTEM IS CRITICIZED BECAUSE OF LACK OF EDUCATORS ON THE BOARDS AND A PREPONDERANCE OF MEMBERS OF THE HIGH SOCIOECONOMIC CLASSES. IN SPITE OF THE IMPORTANCE OF THE GOVERNING BOARD, ITS ROLE IS NOT COMMONLY UNDERSTOOD BY THE PARTIES INVOLVED. THIS DOCUMENT IS VOLUME 10, NUMBER 2 OF "AGB REPORTS" FOR OCTOBER 1967, A PUBLICATION OF THE ASSOCIATION OF GOVERNING BOARDS OF UNIVERSITIES AND COLLEGES. (AUTHOR/WO)

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The Role of the Governing Board

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Governing boards of colleges and universities are involved in various trust responsibilities. Among these, ultimately, are: to carry out the ethical responsibilities involved in the education of youth and the quest for knowledge; to manage the institution in the public interest; to account to official bodies and to the public for actions taken and funds used; to hold title to endowment funds; and to execute other specific trusts. As numbers of institutions, size of enrollments, and complexities of governance increase, the role of this legal entity has become a subject of growing interest that has created the need for a range of studies.

This issue of *AGB Reports* comprises the first publication of a brief but comprehensive analysis of these bodies by Dr. Algo Henderson, Research Educator at the Center for Research and Development in Higher Education at the University of California, Berkeley, and formerly President of Antioch College and Director of the Center for the Study of Higher Education at the University of Michigan. It will appear later in a textbook on administration of higher education by Dr. Henderson and Dr. James Doi.

The AGB offers this statement as a reference document and as the first of several analyses planned for publication over the next few years.

Through the generosity of The Sears-Roebuck Foundation, AGB is pleased to make this document available more widely than would otherwise be possible.

J. L. Zwingle
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The Role of the Governing Board

ALGO D. HENDERSON

Governing boards of colleges and universities derive their authority from the law, and, legally, the full and final control for an institution lies with the board. By virtue of precedents and delegation of authority, in practice the board gives the officers and faculty a substantial voice in determining policies and programs. A review of the origin, nature, legal status, and characteristics of these bodies and their relations with administrators and faculty permit some proposals for reforms in organization, membership, and procedures.

The College as a Corporation

A COLLEGE OR A UNIVERSITY may be founded only in accordance with the law, the usual instrument of establishment being the corporation.[1] In some states where the terms "college" and "university" are protected by law, an institution to be founded under either name must conform to stated criteria.[2] Before recent restrictions were enacted, the use of both terms had been abused: many trade and vocational schools had been given charters under the name "college" or "university," and some small unitary colleges were chartered with "university" as part of the name. In both instances, the institutions have the right to continue to use their chartered terms.

Colleges and universities, as organizations in the public interest and as creatures of the state, are subject to a degree of supervision by the state, commonly only to the extent of seeing that the law is not transgressed. In some states, however, they are subject to special supervision. New York State, for example, requires that all institutions of higher education, public and private, meet certain standards established by the Board of Regents of the University of the State of New York—the supervising and coordinating agency of all of education within the state. Recently, many states have created commissions or boards that have similar responsibilities for the public colleges and universities. In a few states, the state superintendent of public instruction is authorized to approve the founding of public junior or community colleges.

Source and Nature of Legal Authority and Power

A CORPORATION is a collection of individuals united by authority of law into one body under a special name and empowered to act in many respects as an individual. The laws relating to

corporations differ among the states, but the legal principles are fairly uniform. As an artificial person, a corporation has only such purposes and powers as are conferred upon it. The express purposes of a corporation are enumerated in its charter, and ordinarily are stated in a general form that gives the corporation a reasonably broad scope for action. Among the express purposes granted to a college corporation is one that enables the institution to found and operate an educational program.

The powers are those granted by statute. The implied powers that characterize all corporations, by virtue of the legal form, include power to have a corporate name, to sue and be sued, to purchase and hold property, to have a corporate seal, and to make bylaws. The implied powers also include whatever actions may reasonably be necessary to carry out the express purposes.

Certain obvious advantages inhere in the corporate form of organization. The device permits a group of persons to act as a single party in the eyes of the law; thus it may make contracts. It has limited liability; thus members of its board—in the absence of fraud or misdealings—are not individually liable for the debts of the corporation. It has continuing life irrespective of changing personnel; thus it may remain as a legal entity within the term of life stipulated by the charter or as determined by law until the charter is cancelled.

A corporation may be organized by a group of individuals, usually three or more, who prepare a proposed charter and submit it to the appropriate officer of the state, usually the secretary of state, for approval. In some states—New York is an example—a board of education or the chief education officer is delegated the power to approve all requests for charters and amendments to charters of educational institutions. Most charters provide for their amendment; approval of amendments, following adoption by the board of trustees, may be secured from the state in the same manner as for the charter itself. The preparation of a charter or of proposed amendments is a technical matter that ordinarily requires the assistance of legal counsel.

The Charters and Bylaws

THERE ARE FOUR legal devices for the creation of a college or university: (1) the constitution of the state may provide for a specific institution, (2) the legislature may, by statutory enactment, authorize the founding of an institution, (3) a charter for an institution may be granted under the laws pertaining to corporations, and (4) in some instances a taxing district may launch a college. The courts have not always been decisive whether a public college or university organized under two of the methods is a corporation because in some instances it may, from a legal standpoint, be a department of the state. Most public institutions, however, are deemed to be public corporations.

Creation by constitutional provision

In eleven states, one or more of the public universities have constitutional status,[3] with varying degrees of autonomy. Among those that enjoy the maximum of autonomy are the Universities of California and Michigan.

The Constitution in California provides:

> The University of California shall constitute a public trust, to be administered by the existing corporation known as "the Regents of the University of California," with full powers of organization and government, subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the University and the security of its funds. . . . The University shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs. . . .[4]

The three largest universities in Michigan have constitutional status. This policy for the oldest of them, the University of Michigan, dates from 1850 when provision was incorporated into the state's constitution in the following phraseology:

> The board of regents shall have the general supervision of the university and of the direction and control of all expenditures from the university funds.[5]

The revised Constitution of 1963 alters the wording slightly, but retains the substance. Although it also provides for a state

planning-coordinating board of education, seemingly it does not seriously disturb the autonomy of the regents for operations.

The members of the respective boards of these three Michigan universities are elected by the people. Hence, by virtue of their constitutional authority they are, as a body, responsible directly to the people rather than to the legislature. The board must, of course, appeal to the legislature for funds, so that, practically, a way is available for an aggressive or hostile legislature to influence the institution by threatening to cut its appropriations. The courts have repeatedly ruled, however, that once funds have been appropriated to the institution, it becomes the prerogative of the board to administer them.[6]

Constitutional provision gives a university a freedom of action in formulating educational policy and creating a program that does not prevail among all public institutions.[7] It also frees the institution from involvements with state bureaucratic operations and, to a degree, from harassments of political machinations. The principal disadvantage in the view of some is that the constitutional protection removes control too far from the governor and the legislature, who also represent the people. Legislators frequently complain that they are asked to appropriate huge sums from limited state revenues, but must make their judgments without adequate information and without legislative controls over the proposed uses of funds.

Constitutional provision for a public university is based on the theory that education should be a fourth branch of government, and, inasmuch as it underlies the well-being of the whole society, should be separated from the other, essentially political activities of government. Opponents of this theory contend that the nature and scope of all of education is a matter of public policy and, therefore, should be responsibilities of the governor and the legislature.

Creation by statutory enactment

The second method of creating a college or university is through statutory enactment by the state legislature. The statute may take one of two forms: the institution may be founded as a noncorporate department of the state government; or it may be created as a corporate entity by special act of the legislature. Under the first form the institution is required to follow all pro-

cedures laid down for the state government in the transaction of business, including compliance with civil service regulations, state purchasing systems, architectural planning, pre- and post-audits of accounts, and so forth. An occasional public administrator will contend that the state institutions of higher education should be a part of the executive branch of the government. Any significant advantages under this plan are difficult to conceive, and the disadvantages are obvious. In effect the several state officers or their subordinates, in their respective roles, are in position to exercise undue influence on educational policy and program. A college or university exists for purposes that are intangible in nature—the search for truth, for example. It cannot achieve them well when the operations are embedded within the bureaucracy of the state.

The majority of public institutions are corporations that are subject to the will of the governor and the legislature. Examples are many but include the Universities of Illinois, Kansas, Missouri, and Nebraska.[8] As a corporate entity, the institution has more freedom of action than if it were a department of the state. However, if the legislature desires to place restrictions upon the institution, it may do so. In addition, various state officers may deem it their prerogative to require conformity to regulations and procedures affecting state departments, and it is difficult for the university to refuse. Much, then, depends upon the precedents and the traditions that have accrued.

Before 1850, private colleges were often created by special act of a legislature, but thereafter many states adopted constitutional provisions forbidding the creation of corporations by special legislative act (because of alleged abuses in the creation of railroad and canal corporations). Today, the almost universal practice is to incorporate private colleges through petition to the appropriate state agency, usually the secretary of state.

Creation by charter

The charter, the third form of foundation, applies to both public and private institutions, and since the middle of the last century has become the most common form. The nature of this instrument has already been discussed. Some are short and contain only the bare essentials; others are lengthy and spell out special provisions in detail.[9]

An example of a complex charter is that of Harvard University. In 1642, six years after its founding, the General Court of the Colony of Massachusetts Bay made provision for a board of Overseers for Harvard College. This board was a large, composite body designed to tighten the organization of the college. This board continues to the present day, revised, in 1865, only to permit alumni to elect the Overseers. The board proved to be unwieldy for the purpose of conducting operations, with the result that in 1650 the college was granted a charter by the General Court. This charter incorporated the President and Fellows of Harvard College. Thus, Harvard University may be said to have two boards, in a sense analogous to the two houses of a legislature.[10] The corporate powers clearly reside in the President and Fellows. Yet the Overseers have genuine influence on policy and program; they must approve appointment of personnel and proposed bylaws affecting general policies of the university; they may veto the actions of the governing board, though they rarely do so; and they have the important function of visitation which is carried on by the approximately forty visiting committees they have created. (Provision is made at many institutions for boards of visitors, often composed of alumni and distinguished citizens.) Only a few institutions have formalized dual boards. Western Reserve University, for example, recently provided for a Board of Trustees for administrative affairs and a Board of Governors of 62 for educational matters.

Function of bylaws

Corporations have the authority to make bylaws, and most of them do so. Bylaws must be consistent with the provisions of the charter. They usually contain sections relating to the organization of the board, the officers, the committees, quorums for various purposes, time and place for meetings, and specifications relating to the operation of the institution. Inasmuch as a board of trustees has the full legal power within the institution but ordinarily adheres to the tradition that the officers and faculty shall formulate and operate the educational program, a highly important provision or series of them in the bylaws may constitute delegations of authority to officers and to the faculty. Thus, the bylaws of a large university may be a comprehensive document containing hundreds of provisions that spell out the delegations made by the board.

Creation by a taxing district

Under the fourth form of organization, a taxing district has power to found and operate an institution of higher education. Examples are a school district that operates a community junior college, and a municipality that has a municipal college or university. For example, the New York law on community colleges provides:

> Any county, city or intermediate school district acting through its local legislative body or board, or other appropriate governing agency may by local law, resolution or ordinance, and pursuant to the master plan, standards and regulations prescribed by the State University trustees and with the approval of said trustees:
>
> *a.* Establish a community college.
>
> *b.* Elect to participate in and pay an appropriate share of the expenses involved in the community college program of any other local sponsor consenting to such arrangement.
>
> *c.* Combine with one or more other local sponsors for the joint establishment and operation of a community college.[11]

Most public junior colleges are created by an existing school district or by the establishment of a junior college taxing district. The "model" phraseology suggested jointly by the Council of State Governments and the American Association of Junior Colleges for an enabling statute for the creation of public junior colleges recommends "any one or more interested cities, counties or other subdivisions of the state" may, after satisfying certain criteria, establish such a college. The national trend strongly favors the creation of special junior college districts.

The Theory of Governing Boards

THE CHARTER of a corporation is given to a group of individuals who have petitioned for it, or who have been appointed by a governor, or who otherwise have come into existence as a group. The charter creates the board, and the board thus becomes the corporation and exercises the powers of the corporation. The board operates as a unit; individual members have no authority to act for the corporation or to endeavor to direct its affairs unless the board as a whole has given specific authorization for this purpose.

The charter ordinarily gives the board complete power within the limits of its express purposes and the implied authority. Charters sometimes mention specific officers, the faculty, alumni, boards of visitors, and so forth, with some indication of duties and responsibilities. Legally, all such provisions are delegations of the authority vested in the board itself, for the state can have only one central body directly responsible to it.

Board members of colleges and universities are commonly called "trustees"—literally, because they are involved in trust relationships. Among the trust responsibilities of the body are those to manage the institution in the public interest, to account to official bodies and to the public for actions taken and funds used, to carry out the ethical responsibilities involved in the education of youth, to hold title to and to administer endowment funds, and to execute other specific trusts. In part, these responsibilities are the same for any director or trustee of any nonprofit or charitable organization: no individual may secure any personal financial advantage or benefit. In part, they represent the duties of a trustee under a legal trust: title is given to one party but the beneficial interest lies in others. The holder of the title is a "trustee" and he is responsible under the law to administer the trust faithfully in accordance with its conditions. A college receives many trust funds to administer. Members of boards whose experience has been limited to the boards of business corporations or who do not understand the legal theory of trusts sometimes fail in their responsibilities as trustees of an educational institution because they have not comprehended the nature of the trust.

The State of New York has an interesting provision under which the Board of Regents of the University of the State of New York may summon to a hearing any trustee or group of trustees who appear not to be administering their trust responsibilities faithfully.[12] In other states legal action, frequently by the attorney general, may be brought to cause trustees to account for their trust. In either instance, a trustee may be dismissed for reasons of violation of the trust provisions.

Types of Boards and Membership

GOVERNING BOARDS are variously named: board of trustees, board of control, board of regents, board of education, and many occasional variations. According to Wicke, about 80 percent of the independent institutions and 50 percent of public institutions use the term "board of trustees." [13]

Whatever the name, the essential characteristics of authority and responsibility for the institution are the same. Variations in scope occur, as when a board of education is responsible for the public schools as well as for the state colleges that train teachers, or when a board of regents, as in New York, is given statutory charge of licensing for the professions.

Size and selection

Numbers of board members have varied widely—from three to 257.[14] Membership of boards of state institutions usually runs between seven and 12, but the University of North Carolina has 100, ten of whom must be women. The median size is ten for public institutions and 24 for private ones.[15] Many authorities have advocated relatively small boards. Eliot liked seven.[16] Reeves and Russell recommended from seven to nine.[17] A smaller board—between seven and 20—can be representative, is easier to get together for meetings, and incurs less expense for meetings. Its members are likely to take their individual responsibilities seriously, and the chairman can engage the group in effective discussions. A larger board, however, may have advantages accruing from wider representation of interested parties, and many institutions have found the combination of a small board of trustees and a larger board of visitors (or several such committees) to be a productive arrangement.

Boards are selected in many ways. In independent institutions it has been the custom for the board to be self-perpetuating, that is, to have the power to elect new members to fill vacancies. In church-sponsored colleges, the appropriate church body may name the trustees or control their appointment through specifying their qualifications. Among public institutions, practices vary—election by the public, appointment by the governor, selec-

tion by the houses of the legislature, or a combination of these. Over-all, it has become rather common for charters to be amended to permit alumni to select some portion of the trustees, an instance of an interest group securing representation on the board.

Views on faculty representation

The question has often arisen whether the faculty should be represented on the board. A few colleges and universities have done so and apparently with good results. In many foreign universities a faculty council is the board or dominates it through majority membership. The American practice is the opposite. Generally speaking, the foreign universities have not demonstrated results superior to the American plan. In some countries these institutions are really controlled by a national ministry of education.

It can be argued that the primary work of an institution is the operation of an educational program; therefore, those who know most about the job—the professors—should be represented on the board. Many faculty have thus contended. Their principal concern usually is to protect academic freedom, about which they have a better understanding and feel more zealous than do lay trustees. They may, however, influence the board in other desirable ways because of their expertness of knowledge and because they must implement many of the decisions. On the other hand, a faculty-dominated board can become highly introverted and lead the institution down the most conservative of academic paths to the point that it becomes remote from the "real world of affairs."

The opposing conentions cite the advantages of having members who are personally free from involvement, who can look at the institution and its problems objectively and disinterestedly. The infusion of faculty into the board, it is said, can lead to muddy waters in administrative responsibility. If the lay members represent a variety of occupations, civic interests, and personal backgrounds, as they should, they can bring fresh perspective to education. Some boards have solved the problem of including professional educators by electing distinguished members from other faculties and thus have gained the advantage of expert knowledge but avoided involving institutional personnel. The balance of arguments seems to favor having

some professional educators on the board, whether from the inside or outside, or both.[18] Since the board of trustees represents the public interest, it seems best to provide that lay members shall be in the majority.

Charters sometimes make special provision to allocate the faculty responsibility for the educational program and for making and enforcing rules and regulations pertaining to the students, but always subject to the express or implied delegation of authority from the trustees.[19]

The author believes in the value of informal exchanges between faculty members and trustees, and in an earlier volume discussed the matter:

> Theoretically the trustees are the representatives of the public; by controlling policies and finances they insure that the institution is fulfilling its social duties and proceeding on a sound educational path. Actually this is what the Antioch trustees do. Not having to spend their two day session in minute discussion of college investments and administrative detail, they can find time to consider the real questions of the institution's role in society and its larger social usefulness . . . These men and women provide an excellent sounding board not only for the present program of the college but for contemplated changes and additions. And, finally they represent to the college a cross section of public opinion concerning how far and how fast we can advisedly go in the direction of educational change. Antioch trustees are eager to get acquainted with both faculty and students and to find out how those inside the institution feel and think. The trustees meet regularly with the administrative council; they stay in faculty homes; they meet groups of the faculty informally for discussion; and joint faculty-trustee dinners are arranged. A feature of almost every meeting of the board of trustees is a report from the community manager or from a student group, usually followed by an informal discussion and question period. Thus the trustees can form first hand judgments about the Antioch personnel who are behind the policies and can function as part of the group.[20]

Criticisms of Memberships and Proposals for Reform

THE COMPOSITION of most boards becomes skewed in favor of the upper socioeconomic segments of society. This leads to

criticisms of the American practice of using exclusively lay boards and of the composition of lay boards. It has been said that trustees do not understand higher education and that many members are not even well educated. The criticism continues along several lines: membership is biased strongly in favor of businessmen, lawyers, persons of wealth, and older people; boards, whose dealings are with problems that affect young people, have members who are too old and conservative when, instead, genuinely progressive leadership is required; large segments of the public—notably women, labor, and the lower socio-economic classes—are not represented.

Thorstein Veblen, a voluble critic, stated the more extreme view of the faculty: "Plato's classic scheme of folly, which would have the philosophers take over the management of affairs, has been turned on its head; the men of affairs have taken over the direction of the pursuit of knowledge."[21] Veblen advocated that the professional job be left in the hands of the profession. His view has been shared widely by faculty.

The Veblen-faculty criticism has a degree of consistency with that of certain students. The students of the Free Speech Movement at the University of California in 1964 and 1965 voiced criticisms of the "establishment" along the following line of reasoning:

> Most of the Regents, FSM leaders argued, are not qualified "academically" to govern a university; moreover, they are not non-political, as the Constitution requires. Indeed, the FSM suggested, it is naive to believe that this is possible. Regents have their own views of proper social policy, and their interests are intimately bound up with those views. Since most of the Regents are associated with large and successful commercial, industrial, or financial corporations, the FSM leaders reasoned, it is to be expected that they will strongly favor preservation of the *status quo,* will opt for stability and for little change of existing "power-relations" in society. The FSM charged the Regents with pursuing such interests by systematic attempts to suppress student political action for social change.[22]

The board and academic freedom

This charge by students seems to add a dimension to the age-old argument about academic freedom. Faculty who voice or publish criticisms of existing social behavior and structure invariably invoke the principles of academic freedom to protect

their position. The purpose of academic freedom is to assure freedom in search for truth. Some students apparently feel that there should be complete freedom in speech and social action. The issue of freedom goes beyond this discussion, but the Berkeley controversy sheds light on the problem of maintaining the essential function of a university, which includes inquiry into controversial issues, concern with finding solutions to the unresolved issues of the day, and a search for the good life.

A prime responsibility of the board is to protect the institution from the wrath of groups that would destroy the function. The board must guard zealously the privilege of objective search and responsible advocacy regarding change in our society; it must support the administration and faculty in any endeavor to direct the motivations and energies of students of high intellectual ability and strong social sensibility into constructive educational channels.[23] At the same time, it must support the administration in avoiding impairment of freedom because of actions of individuals—faculty and students—whose minds are controlled by external groups or whose agitation is not the fruit of intellectual inquiry. The dividing line is sometimes hard to identify, but it is better to err in the direction of freedom than to stifle speech and action.

Members of governing boards have a high duty to society to acquire for themselves a thorough understanding of the essential nature of an institution of higher learning. The very existence of the problem implies the great care that should be exercised in selecting board members. It suggests that members should be open-minded on controversial issues and objective in making inquiry.

Need for broader representation

Hubert Beck has supplied considerable data about the representativeness of trustees, their ages, and their interests. Among his sample of 734 trustees from 30 universities of high prestige, he discovered only 36 educators of any type, including several presidents. Business and professional people held 71 percent of the posts. The clergy, who a century ago controlled privately financed American higher education, in 1947 occupied only 6.6 percent of the positions, and three-fifths of them were Catholic priests. Forty-one percent were in some social register or exclu-

sive club; only 3.4 percent were women.[24] Forty-seven percent were sixty years of age or over. Beck concluded that ". . . the observed pattern in trustee selection was closely consistent with the high value current American society places on pecuniary success, the high prestige and power enjoyed by certain occupations characterized by high pecuniary reward, and the common tendency to identify achievement of these awards with the furtherance of the public welfare."[25] He concluded in general that trusteeships go to persons who have resources, time, and prestige.

Data that suggest that the characteristics of members have not changed were collected in 1965 by Troy Duster. The median age was sixty, and the median income between $50,000 and $75,000 per year. In his sample of 306 trustees, there were ten professors, eight clergymen, one Negro, and one labor official.[26]

It is probably obvious that people with these qualifications have many contributions (other types, as well as money) to make to our colleges and universities. The question arises not in criticism of any individuals but to ask whether the boards should not be more representative than they are. Would there not be value in giving a larger representation to younger men and women who are closer in age to students and whose viewpoints would be less inhibited by acquired interest that they are accustomed to protect? Since women constitute more than 40 percent of enrollments, are women sufficiently represented on the boards? Men from organized labor are on the boards of only a handful of institutions; should they not be more widely represented? Such questions seem pertinent.

Beck suggested a number of reforms: fix a definite retirement age (with, perhaps, honorary trusteeship following); revise the method of co-optation so that the in-group would not always recruit from among its own type; use a principle of broad representation, for example, draw in—from the public—representatives of business, the professions, agriculture, and labor, and—from the universities themselves—faculty, alumni, and students: make the term of office at least four years and possibly six or eight.[27]

Beck's data confirm an impression that board members too often are selected for their ability to make gifts to the institution. Much as the money is needed, the policy seems unwise. In the

first place, it does not always produce the desired results. But second, and of greater importance, it puts into the hands of persons chosen on a single criterion the governance of institutions in which there is a substantial public interest. Our colleges and universities deserve to be governed by persons who have been selected on grounds other than sheer expediency.

Functions of the Board

LEGALLY, THE BOARD of trustees has the full authority and responsibility for the institution; there is no way in which it can avoid its charge. Customarily in higher education, however, a board delegates large areas of authority. The institution employs faculty members who have professional competence, and to them the board and president entrust the educational program—a practice that was started even before lay boards came into existence.

Basic responsibilities

Burgess, a trustee of Northwestern University, defined the basic duties of trustees as three: (1) to select a president and to have a hand in selecting other of the officers who might logically be in line to succeed the president, (2) to declare the principal objectives and policies of the institution (with the president and other officers), and (3) to preserve and invest the assets of the institution.[28]

Hughes, a distinguished university president, divided the responsibilities of the board into two categories, those that are specific and those that pertain to policies. As specific, he listed the responsibility to "hold all property, authorize the budget and budget changes, fix policies, appoint the president, and serve as a court of final appeal in all matters." The responsibility for policy formation, Hughes saw as including size of the institution, the general admission requirements, the campus and the buildings, the scope of the work, the policies affecting the faculty, the library, the chapel, scholarships, student activities, athletics, fraternities and sororities, residence halls, the placement of students and graduates, and alumni relations. To draw the distinction between the responsibilities of the board and of the faculty, he said, "The faculty, under the board, teaches all students, deter-

mines all curricula and courses to be offered and classes to be taught, and assigns classes to teachers, determines grades, who shall graduate and who shall receive degrees, both in course and honorary." [29]

Most authorities agree that the selection—and sometimes the dismissal—of the president of the institution is the single most important responsibility of the trustees. This statement in no way implies that the trustees should not consult with the faculty and other parties concerning nominees for the position. A highly desirable procedure is to have parallel committees, frequent consultations, and final agreement on the choice. The faculty must recognize, however, that the final responsibility lies with the board.

The board's duty to declare the principal objectives and policies of the institution derives from the charter. Once formulated at the time of the initiation of the institution, thereafter the board will ordinarily consult through the president with the faculty on these matters. Policies need frequent review and reconsideration if the institution is to attain fully its objectives in education and research.

Responsibility for fiscal affairs and appointments

Inasmuch as the board holds title to the property of the institution, it feels keen responsibility for its preservation and management.[30]

Money and people are two principal ingredients in the conduct of any operation. Governing boards should be kept fully informed by the president about the acquisition and status of funds and about the employment of key personnel.

An important vehicle through which to plan, implement, and control a college or university is by controlling the use of funds—the budget. Usually the board will require that the budget be submitted for its inspection and approval. Although the board does not participate in the formulation of the budget, it may have discussed and laid down the guidelines for its preparation. In general:

> . . . it can and should ensure that the budgetary operation has been conducted in a sound fashion, that it adequately reflects the aims of the institution, that economy is being practiced, and that there is balance and good sense in the whole process. Without second-guessing the president on specific items, the board

> may exercise a powerful long-range influence on budgets by throwing the weight of its opinion and judgment in one direction or another.[31]

A president would be unwise not to seek the approval of his board on appointments to top-level administrative posts, especially as provost, vice-president, or dean. Boards sometimes claim the prerogative of identifying and appointing these officers. Such actions are inconsistent with the policy of acting through a single executive officer, the president; and if the president yields his own prerogative of recommendation, he is in for future trouble. Traditionally, boards have approved faculty appointments, by voting a list proposed by the president, which has been arrived at in collaboration with appropriate segments of the faculty. Under this plan, if a member of the board has any objection to an appointment, the case can be discussed by the president with the board. Board approval of appointments can be justified on two grounds: (1) the courts have held that a board may not abdicate the responsibilities that are specifically given to it; and (2) the president needs the understanding support of the board for the policies affecting faculty appointment and tenure.

During their one- or two-day meetings, boards usually are deluged with materials that relate to formal approvals. An example of one of these items might be the request to approve from 50 to 200 faculty appointments, with most of the information about each person being given in a one-page "Who's Who" memo. Formal approval, based upon confidence in the recommending officers, is about all that can reasonably be expected.

Improving the quality of deliberations

Some boards have endeavored to open the way for more productive use of their time in considering basic policy and long-range planning. This approach can be illustrated by an action at the University of Chicago. A trustee of Chicago, Laird Bell, expressed fresh views about functions of the governing board and described the attempt made at Chicago to delegate more complete authority to the president. He stated:

> Logically the trustees as the controlling body have the right—and in fact the duty—to determine what *kind* of education shall be offered. As custodians of the property and funds they are

> bound to see that they are devoted to the purposes for which they were given. They are free (subject to terms of their charter and endowments of course) to determine whether the institution shall be a liberal arts college, a technical school, a professional school or teachers college, whether new projects shall be undertaken, new schools or institutes created, existing ones liquidated, and so on. They also can and should have much influence on what might be called the tone of the institution. But once overall policy is decided it *ought* to be true that the educational experts should determine how the policy is to be implemented. Curricula, personnel, promotions, tenure and the like should be prescribed by the experts.[32]

The view expressed by Bell, a trustee, is similar to a position taken by Clark Kerr during his presidency of one of the largest universities. At a meeting of the Board of Regents of the University of California on June 18, 1965, Kerr made recommendations for reorganizing some of the procedures of governance. In support of them:

> He stated that his proposals assume that The Regents may be willing to reverse their historical approach to their responsibilities and delegate to the administration responsibility for all matters not specifically reserved for action by the Board. He pointed out that his proposals do not contemplate that the Regents would relinquish their traditional authority over and responsibility for the affairs of the University, but, rather, that they would devote their time to matters involving major policy decisions, major appointments, review of performance, etc.[33]

To illustrate the functioning of the board at Chicago, Bell described how the trustees passed motions giving the president authority to make all appointments to staff and faculty subject to (1) departmental approval and (2) referral to the board of cases likely to involve public criticism. As a further illustration, he described the duality of responsibility of the chancellor (president) and the council of the university senate regarding the educational program: ordinarily they arrive at agreement, but in the event of a deadlock the matter is carried to the trustees for a decision. This role for the board seems to concur with Hughes' idea of using the body as a court of appeals.

Assuming that Burgess has defined aptly the basic functions of the governing board, and that Hughes has shed light on the functions as they are usually carried out, Bell and Kerr have offered constructive suggestions for performing the functions in

a manner that makes optimum use of members' wisdom and energies. The ability to operate with the degree of delegation of authority that the views of Bell and Kerr implied will depend, of course, upon the mutuality of confidence that exists between the board and its executive officer. Because the functions of trustees of a college or university differ from those of directors of business corporations—their trust responsibilities, the authority delegated to faculty for academic matters, the intangible nature of the products of teaching and of research—new members should be given an orientation to their role. Probably this should be done by the president and the chairman.

Role of the Executive Officer

THE BOARD invariably selects the executive officer. In nearly all American institutions he is given the title "president," although in a few it is "chancellor," and in a few junior colleges it is "director" or "dean." Universities of other countries use such titles as "vice-chancellor," "rector," "principal," or "president."

In one sense the executive officer is president of the educational corporation, just as he would be in any other corporation. In another sense, he is the educational leader of the institution. The point that the president is the *executive* officer must be emphasized. He is responsible for carrying into operation the policies and decisions of the board. By virtue of the board's authority, it is his duty to inform that body about the operations, the achievements, and the problems of the institution. Ordinarily he makes recommendations to the board for actions to be taken by it. It is equally the responsibility of individual board members to avoid meddling in the internal affairs of the institution.

Practice varies with respect to whether the president is a member and also chairman of the board. Eliot advocated that the president should be chairman so that he may serve as "leader and inspirer" at their sessions.[34] An additional argument is that, inasmuch as the president is the liaison officer between the board and the faculty, and if he is able to preside over the deliberations of both bodies, he is in a position to coordinate all activities effectively. This plan seems to offer efficiency, for when the board has a separate chairman, it is usually the president who

must prepare the agenda (which may consist of dozens or hundreds of items) and then coach the chairman on the actions that should be taken. But it can also be argued that the board employs the president and, therefore, he should report to it, rather than being in a command position or even a member of the body. A lay chairman who is a man of distinction and influence can help the institution substantially if he supports the president and also makes himself available for advice and counsel and for public contacts. Effective administration suggests that the advantage lies in having the president serve as the presiding officer, an arrangement that also avoids the occasional situation where the chairman "takes over" the prerogatives of the president.

Sometimes when the president is not the presiding officer of the board, he is designated as secretary. In this position he can help control the agenda and can insist that decisions be clearly stated and recorded. Although many boards use secretarial staff to take minutes—a practice to be commended—others require the secretary to do this. Thus the president may be kept occupied in making clerical notes when his leadership in discussion is needed. In this role, the board sometimes treats him as a flunky.

If someone other than the president is chairman of the board, it is of the highest importance that the two men have a strong personal rapport and a good working relationship. To achieve this, the president must consult the chairman frequently on important matters, keeping him fully informed, and the chairman on his part must use discretion in his actions by consulting carefully with the president. If the two men do not find much common agreement on policy formation or if they are temperamentally unable to work well together, the president may as well recognize that he is on his way out.

Although the president is dependent on the board for support, inasmuch as it has full control over his position and tenure, the board is dependent upon the president as its executive officer. Board members who meet once a month, or in some cases as rarely as once a year, cannot keep well abreast of the institution's affairs and need to have their memories refreshed at nearly every meeting. Furthermore, since members typically are not educators, they must rely heavily upon the president for leadership.

Administrative Relationships

IN EARLY PRACTICE, many boards required that the chief financial officer as well as the president report directly to them. The theory was that the board was responsible for finances and that it needed to have an officer in charge independent of the president; thus also the president would be free to devote himself to education. This proved to be unrealistic in that the president has never been able to divert himself of the principal financial responsibility. The plan also is inconsistent with the concept, now universally approved by authorities, that the board should relate to the administration through a single officer, the president. Modern accounting practices—internal audits, and post-audits by state auditors or certified public accountants—protect the board from the misuse of funds.

Having subordinate officers—the various vice-presidents, the provost, the treasurer—attend meetings of the board as assistants to the president is a different matter. Many presidents wish to bring selected principal staff officers to most of the meetings, so that their knowledge and advice will be available. These officers, in turn, gain perspective on the work of the institution and the interests of the board. This practice is to be commended, but the wise president will maintain careful control by making it clear that the officers are present, at his request, to render assistance to him in connection with his responsibilities to the board.[35]

The procedure described above relates to the administration of the institution. When the board has occasion to provide for a substantive review of policy and practice, it should seek the full cooperation of the president. It may, however, be advisable to appoint a study director who would report directly to the board.

Sometimes faculties feel that they should appoint representatives to sit in on board meetings to express the views of the faculty. The matter of having faculty serve as members has been discussed; similar arguments, pro and con, can be applied to their official attendance at the meetings. As noted above, there are other techniques which the president can use to facilitate communication between the faculty and trustees. Of course,

when a board opens meetings to the public, faculty may attend as part of the audience.

Board Meetings

CUSTOMARILY THE PRESIDENT and his staff assistants prepare for meetings of the board of trustees by readying the agenda, arranged as an order of business. Also customarily agenda are supplemented by memoranda, which include analyses of problems and justifications of recommendations. Unless the board has authorized the president to handle matters without reference to it (as in the illustration from the University of Chicago given above), he must present for the board's consideration all matters pertaining to the operations of the institution—budget plans, building needs and maintenance, appointments to the faculty, authorizations of programs, recommendations for the granting of diplomas, data about financial requirements, and so forth. Clearly, the items requiring attention and the data to support recommendations become voluminous. In view of the demands on the board, it is of utmost importance that all communications prepared for its attention cover the subject matter succinctly and are readable so that members can digest the ideas in advance of the meeting.

Delegation of responsibilities

Not many boards have had the courage shown at the University of Chicago to turn over substantial authority to the president and his staff. A simple procedure would be for the board to require the president to report on all actions that lie within its province but to relinquish the right to act separately upon each item. The president would, in effect, be given a vote of confidence or would be advised of differences of viewpoint on the part of the board. Discussions of the differences could become the basis for altered actions in the future. In genuinely serious cases, actions taken might be reversed inasmuch as the board does possess veto power. This procedure makes an appropriate and clear distinction between policy promotion, a board function, and administration, the responsibility of the president.

The handling of large numbers of detailed items can readily

give rise to another difficulty. Many boards divide their work among subcommittees and many specify that a member of the administrative staff be delegated to meet with the subcommittee whose concern is in line with this function. Whether the committee meets alone or with a vice-president or dean, the president is likely left out of the discussion. Thus to a degree he loses contact with, and control over, actions being taken. A better solution suggests having a limited number of subcommittees whose meetings are held at intervals scheduled to permit the president to attend.

According to Wicke, subcommittees most frequently found are: executive, investment, buildings and grounds, and faculty, followed by budget, audit, student affairs, athletics, and nominations.[36] In each institution the board should determine the number and role of subcommittees only after it has clearly defined its own functions. Often an executive committee is appointed with power to act between board meetings subject to ratification by the board.

Some presidents have loaded the board with so much detail about campus, buildings, finances, and public relations that it can find little time to devote to the educational program. The ulterior but deliberate purpose may be to keep the board so occupied as to give the faculty a freer rein in managing the educational program. It seems questionable, however, that trustees can act imaginatively and effectively in behalf of the institution if they are kept at arm's length from the institution's main job. The best practice seems that of keeping the trustees fully informed and, indeed, inviting them to participate in discussions about educational objectives and program. Under such a policy, many presidents have been successful in persuading the trustees to leave decisions affecting educational policy and program to the faculty, subject only to review from time to time.

Open meetings

At a number of public institutions issue has been made in recent years whether board meetings should be open to the public, including representatives of the press, faculty, and students. The contention goes: The institution uses public funds, renders public services, and engages in educational activities of great importance to taxpayers, parents, faculty, and students;

these matters should be debated in public, and the public should get its news direct from the scene of action rather than from news stories prepared by the institution. Further, some faculty and student groups contend they should have the privilege of addressing the board on matters of educational and environmental concern. On the other hand, it is argued: The board members are representatives of the public, the lay board existing for this very purpose; the president should be the spokesman about all internal matters; the presence of outside parties not directly responsible for decisions damps the agenda and the discussion; and the meetings can be conducted more efficiently when only board members are present and participating. In any event, it is said, the institution normally does publicize the principal actions taken at board meetings, and publishes annual reports detailing both achievements and finances.

The pressures for open meetings have gradually caused more public institutions to open their board meetings. In some states, the law has been revised to require that meetings be open but with the privilege retained of holding executive sessions. Often, when meetings are public, board members hold "informal" gatherings where controversial issues are discussed prior to the formal meeting. The values of public meetings have not been fully assessed. In the absence of a specific law, a possible compromise is for the board, exercising its powers to govern itself, to hold some executive sessions, opening other sessions to the public.

Informal Services of Trustees

THE DISCUSSION thus far has been limited to the official duties of the members of a board. Many college presidents obtain from their trustees additional contributions of service, especially for public relations purposes. Indeed, among private colleges it is not uncommon for board members to be chosen primarily for their capacity to "deliver" in this respect. The additional activities most often involve raising money for the institution and publicizing it with parent and student groups. Some colleges rely heavily on their trustees individually and as a group to raise funds to balance the budget, to build plant, to provide scholarships, and so on. In a public institution, the members can give

the president strong support in working with the legislature and governor.

A board that is composed of men of high caliber can bring to the institution advantages not necessarily implicit in their official duties. They can serve the president as a source of readily available consultation and inspiration in discussing educational problems and ideas. He may gain added perspective from their more disinterested viewpoints. The members, drawing on their experience in industrial laboratories, civic and cultural activities, the professions, and the like, may be more alert than the faculty to certain educational needs and means of implementation. A member can perform a needed function by asking questions that provoke fresh thinking. In essence, the board may serve as a "balance wheel" in the ongoing development of the institution.

Another value of a strong board lies in the support that its members can give the president, his faculty, and the institution in times of crises. Assuming that the trustees have been kept fully informed about problems, if a crisis causes the institution to become the subject of controversial discussion, the trustees can do much to stabilize the situation. As trustees, they have a responsibility to weigh the issues carefully and to consider them in the frame of fundamental objectives of an institution of higher learning. Thus, their seasoned judgment can be better grounded than the emotionally derived opinion of segments of the public. As laymen and persons of some prominence whose opinions are respected, they can do much, through appropriate statements, to allay suspicions and fears. They can also provide the president a sense of security for dealing with the problem.

A primary, but unofficial, role for trustees is to represent the institution to the public.

Interinstitutional Boards

A COLLEGE OR UNIVERSITY may, under certain circumstances, be subject both to an operating board and to a high-level coordinating board. The best example among public institutions is the case where the state regards its several public colleges as constituting a system of higher education for the state. Some states

have one board as the board of control of all the institutions. But in other instances each institution may continue to have its own board, and may also be subject to certain policies enunciated by a state board that performs broad roles of planning and coordination. An illustration occurs in California, where the public junior colleges have their individual operating boards but also are under the state board of education, the several state colleges have an operating-coordinating board, the state university with its several campuses has an operating board, and above all is a board that does certain over-all planning and coordinates all of higher education. This subject is too involved for detailed analysis at this point.

These complex systems of governance give rise, however, to certain kinds of problems of administration. A primary purpose of a planning-coordinating board is to project plans for the state as a whole, to allocate to particular institutions their general roles, and to take steps to avoid unnecessary overlapping. The top-level board may thus persuade the legislature to assign to a particular institution its role in the state system, within which it will be required to operate. Proposals for new programs, for additions to programs, and for new budget may be required to be approved by the coordinating board before they can be presented to the appropriate public authorities. In certain respects this protocol inhibits the actions of the individual institutions. Yet state legislatures have sometimes been so confused by the competition and bitter rivalries displayed among state institutions that they have sought a means to bring about a degree of coordination.[37]

Summary

COLLEGES AND UNIVERSITIES are corporations governed by boards of trustees. Some are public; others are private, nonprofit corporations. Ordinarily the boards are composed of lay personnel, the theory being that they are representative of the public who, in turn, are interested in the welfare of the institution. In legal theory, the board has complete authority and responsibility for the institution. In practice, by reason of tradition and the professional competence of the faculty, much of the authority of

the board is delegated to the officers and faculty. As a rule of thumb, the faculty largely determines the program and standards for educating students, and the trustees take direct responsibility to assure that the plant is adequate, finances are obtained and well used, a president is selected, and over-all policies are determined. The president becomes the executive officer of the board who works, in effect, in liaison capacity with the faculty and with the board.

The lay board as found in the United States is unique among the universities of the world. It has some advantages of involving representatives of the general public in the formation of policy, in overseeing the management of the institution, and in assisting the institution to secure adequate resources. The board, however, has not been without criticism, especially because its ranks include few educators, and membership tends to be skewed toward the high socioeconomic classes. Over-all, the board of trustees holds a vital position in the educational institution, yet its role commonly is not well understood by any of the parties involved.

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[1] As an illustration, see "General Corporation Act," *Compiled Laws of the State of Michigan,* 1948, and *Supplements,* § 450.1-450.696; especially § 450.117; 450.124-450.127; 450.170-450.177.

[2] *Ibid.,* "Educational Corporations," § 450.171; see also *CL* 1948, 390.871, "Community College Defined."

[3] Fred W. Hicks, "The Constitutional Autonomy of the University of Michigan and Its Significance in the Development of a State University" (Unpublished Ph.D. dissertation; Center for the Study of Higher Education, University of Michigan, 1963).

[4] Constitution, State of California, Art. xi, § 5.

[5] Constitution of Michigan of 1908, Art. xi. § 5.

[6] See *Michigan Statutes Annotated* (Chicago: Callaghan & Co., 1936), I, 430–31.

[7] See Edward C. Elliott and M. M. Chambers, *The Colleges and the Courts* (New York: Carnegie Foundation for the Advancement of Teaching, 1936), for details on this and the several following paragraphs.

[8] For a specific instance, see Public Act No. 120 of 1960, § 15.1852, Grand Valley State College; *Michigan Statutes Annotated* (Chicago: Callaghan & Co., 1960), pp. 186–88.

[9] Edward C. Elliott and M. M. Chambers, *Charters and Basic Laws of Selected American Universities and Colleges* (New York: Carnegie Foundation for the Advancement of Teaching, 1934), 640 pp. This volume sets forth the charters of a considerable number of American universities. It also gives the constitutional provisions and the statutes, as of the publication date of the book, that provided for the universities in certain states.

[10] Charles W. Eliot, *University Administration* (New York: Houghton Mifflin Co., 1908), pp. 48–65.

[11] New York State Laws of 1948, Ch. 696, Art. 126, § 6302.

[12] The Board of Regents in New York "may remove any trustee of a corporation created by them for misconduct, incapacity, neglect of duty, or where it appears to the satisfaction of the regents that the corporation has failed or refuses to carry into effect its educational purposes." See *McKinney's Consolidated Law of New York Annotated,* Book 16, pt. 1 (tit. 1, art. 5, § 226, ¶ 4), 1953, pp. 97–98.

[13] Myron F. Wicke, *Handbook for Trustees* (Nashville, Tenn.: Board of Education, Methodist Church, 1957), 57 pp.

[14] E. C. Elliott, M. M. Chambers, and William A. Ashbrook, *The Government of Higher Education* (New York: American Book Co., 1935), p. 26.

[15] "The Role of the College and University Trustee" (New York: Carnegie Foundation for the Advancement of Teaching), p. 6.

[16] Charles W. Eliot, *op. cit.,* p. 3.

[17] Floyd W. Reeves, John Dale Russell, *et al., The Liberal Arts College* (Chicago: University of Chicago Press, 1932), p. 67.

[18] For recommendations from the teachers' viewpoints see the "Statement of Principles" of Committee T, American Association of University Professors.

[19] For examples of such charters, see Edward C. Elliott and M. M.

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[21] Thorstein Veblen, *The Higher Learning in America* (New York: Sagamore Press, 1957), p. 57.

[22] Terry F. Lunsford, *The "Free Speech" Crises at Berkeley, 1964–1965: Some Issues for Social and Legal Research* (Mimeographed; Berkeley: Center for Research and Development in Higher Education and Center for the Study of Law and Society, University of California, December 1965), p. 126.

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[24] Hubert Park Beck, *Men Who Control Our Universities* (New York: King's Crown Press, 1947), pp. 130–33, 168.

[25] Beck, *ibid.*, p. 134.

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[27] Beck, *op cit.*, p. 147.

[28] K. F. Burgess, "The Trustee Function in Today's Universities and Colleges," *Association of American Colleges Bulletin,* October 1958, pp. 399–407.

[29] Raymond M. Hughes, *A Manual for Trustees of Colleges and Universities* (3rd ed.; Ames: Iowa State College Press, 1951), p. 11.

[30] For a more detailed discussion of the responsibilities of trustees, including a number of case studies, see Morton A. Rauh, *College and University Trusteeship* (Yellow Springs, Ohio: Antioch Press, 1959), especially pp. 17–57. See also the report of the salf-analysis made by the Board of Trustees of Columbia University, *The Role of the Trustees of Columbia University* (William S. Paley).

[31] "The Role of the College and University Trustee," p. 11.

[32] Laird Bell, "From the Trustees Corner," *AAUP Bulletin,* October 1956, p. 354.

[33] Minutes of the Regents of the University of California, June 18, 1965, pp. 1–2, as quoted in Lunsford, *op. cit.*, p. 132.

[34] Charles W. Eliot, *op. cit.*, pp. 228–29.

[35] For a discussion of the unit versus the multiple type of organization, see John Dale Russell, *The Finance of Higher Education* (Rev. ed.; Chicago: University of Chicago Press, 1954), pp. 12–19.

[36] Wicke, *op. cit.*, p. 3.

[37] For discussions of this subject, see Lyman Glenny, *Autonomy of Public Colleges* (New York: McGraw-Hill Book Co., 1959), and M. M. Chambers, *Voluntary Statewide Coordination in Public Higher Education* (Ann Arbor: University of Michigan, 1961).

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